IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9335 OF 2004.

Sharad G. Kathawate ... Petitioner.

V/s.

Pune Zilla Sahakari
Dudh Utpadak Sangh & anr. ... Respondents.

Shri S.V. Pitre for the petitioner.

Shri R.R. Yadav i/b J. Shekhar & Co. for respondent Nos. 1 & 2.

CORAM: V.C.DAGA, J.

DATED: 29.1.2007.

P.C.:

. Heard learned Counsel for the petitioner. Perused petition.

2. This petition is directed against the order dated 30.8.2004 passed by the Co-operative Appellate Court, Pune, whereby application for condonation of delay came to be rejected for the reasons recorded in the said order.

3. Shri Pitre, learned Counsel for the petitioner submits that delay has been sufficiently explained by the petitioner and that delay in filing appeal ought to have been condoned by the lower appellate Court. He placed reliance on the judgment of the Apex Court in the case of

M.K. Prasad vs. P. Arumugam, (2001) 6 SCC 176

and pressed into service para 10 of the said judgment reading as under:

> . "In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex parte decree as is evident from his application filed under section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilant should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex parte decree, the Court should have kept in mind the judgment impugned, the extent of the property involved and the stakes of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the Court in this case can be compensated by awarding appropriate and exemplary costs. In the interest of justice and under the peculiar circumstances of the case, we set aside the order impugned and condone the delay in filing the application for setting aside ex parte decree . To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the exparte decree as well."

4. During the course of hearing I was also taken through the factual aspect of the matter with material available on record so as to demonstrate good case for condonation of delay. It appears that the dispute was filed in the year

1991 seeking declaration that the termination order is bad and illegal.

5. The suit came to be decided practically after 11 years i.e. on 4.10.2004. Petitioner did not lead any oral evidence in support of the monetary claim which he was claiming.

6. The Co-operative Court was pleased to decree the suit holding that the termination was illegal. However, denied all other claims leading to monetary benefits for want of evidence.

7. Apart from the application for condonation of delay setting out reasons in para 4 of the application, no material was produced on record in support thereof.

8. Having examined the order and considering the facts available on record it is clear that the petitioner was casual in his approach right from the inception of the litigation. He did not prosecute it diligently. At every stage he cannot expect exercise of discretion by Courts in his favour. The view taken by the lower appellate Court is a reasonable and possible view. No sufficient cause is made out by the petitioner to

condone delay. The reason given can hardly be said to be a good and sufficient cause for condonation of delay. Now in the days of expeditious disposal of cases and drastic amendments to procedural laws, the litigants are expected to be diligent, prompt and careful in prosecuting their rights. The casual approach has no place. At the same time, Courts are also not expected to casually condone delay. This Court not being a court of appeal is not expected to substitute impugned order with its own order.No case is,thus, made out to interfere with the impugned order. Petition is, therefore, dismissed in limine with no order as to costs.

(V.C. DAGA, J.)